Series 2006
Number 1

DELAWARE RIVER BASIN COMMISSION

MEETING OF MARCH 1, 2006

Minutes

The Commission met at the offices of the Delaware River Basin Commission in West Trenton, New Jersey.

Commissioners present: Kevin C. Donnelly, Chair, Delaware Member
Harry W. Otto, Delaware Member
Lt. Col. Robert J. Ruch, Vice Chair, United States Member
William A. Gast, Second Vice Chair, Pennsylvania Member
Samuel A. Wolfe, New Jersey Member
Fred Nuffer, New York Member

DRBC Staff participants: Carol R. Collier, Executive Director
Robert Tudor, Deputy Executive Director
Pamela M. Bush, Commission Secretary/Assistant General Counsel
Kenneth J. Warren, DRBC General Counsel, Wolf, Block, Schorr & Solis-Cohen
Thomas J. Fikslin, Ph.D., Modeling and Monitoring Branch Head
Richard K. Fromuth, Operations Branch Head
Richard C. Gore, Chief Administrative Officer
William J. Muszynski, Project Review Branch Head
Kenneth F. Najjar, Ph.D., Planning and Implementation Branch Head

Chairman Kevin Donnelly convened the business meeting at 1:30 p.m.

Minutes. Mr. Donnelly called for a motion to approve the Minutes of the Commission's meeting of December 7, 2005. Lt. Col. Ruch so moved, Mr. Nuffer seconded his motion, and the Minutes of the December 7, 2005 Commission Meeting were approved by unanimous vote.

Announcements. Ms. Bush announced the following upcoming meetings and events:

- *DRBC Inter-Basin Transfers Subcommittee Meeting.* Thursday, March 9, 2006 at 9:30 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. This is a subcommittee of the Water Management Advisory Committee. The staff contact is David Sayers, (609) 883-9500, ext. 236.

- *DRBC Toxics Advisory Committee Meeting / PCB Expert Panel Meeting.* Thursday, March 23, 2006 at 9:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. The staff contact is Daniel Liao, (609) 883-9500, ext. 266.

- *DRBC Water Management Advisory Committee Meeting.* Wednesday, April 19, 2006 from 9:30 a.m. to 2:30 p.m. in the Planning Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. The staff contact is David Sayers, (609) 883-9500, ext. 236.

- *DRBC Flood Advisory Committee Meeting.* Wednesday, May 3, 2006 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. The staff contact is Rick Fromuth, (609) 883-9500, ext. 232.

- *Next Commission Meeting.* Wednesday, May 10, 2006 in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey.

Hydrologic Conditions. Mr. Fromuth reported on hydrologic conditions in the Basin.

The observed precipitation for the Delaware River Basin above Montague, New Jersey during calendar year 2005 was 48.34 inches, or 5.08 inches above normal. For the same period, rainfall for the Delaware River Basin above Trenton, New Jersey was 51.12 inches or 6.23 inches above normal and in Wilmington, Delaware, precipitation measured 40.30 inches or 2.51 inches below normal.

The observed precipitation for the Delaware River Basin above Montague, New Jersey for the period January 1 through February 27, 2006 was 6.29 inches or 0.72 inches above normal. For the same period, rainfall for the Delaware River Basin above Trenton, New Jersey was 7.43 inches or 1.43 inches above normal and in Wilmington, Delaware, precipitation measured 6.51 inches or 0.27 inches above normal.

The average observed streamflow of the Delaware River at Montague, New Jersey in January 2006 was 16,086 cubic feet per second (cfs), or 323.5 percent of the long-term average for the month. The average observed streamflow at Trenton, New Jersey in January was 31,774 cfs, or 247.0 percent of the long-term average for the month.

For the period from February 1 through February 27, 2006, the average observed streamflow of the Delaware River at Montague was 10,171 cfs, or 178.3 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 20,854 cfs, or 150.7 percent of the long-term average for the month.

In the Lower Basin, as of February 28, 2006, Beltzville Reservoir contained 13.18 billion gallons (bg) usable, or 101.4 percent of usable storage. Blue Marsh contained 4.90 bg usable, 102.9 percent of winter pool usable storage, and Merrill Creek contained 15.58 bg usable, or 99.3 percent of usable storage.

In the Upper Basin, as of February 28, 2006, Pepacton Reservoir contained 138.058 bg usable, or 98.5 percent of usable storage. Cannonsville contained 96.784 bg usable, or 101.1 percent of usable

storage. Neversink contained 33.654 bg usable, or 96.3 percent of usable storage. Total New York City Delaware Basin reservoir storage was 268.496 bg usable, or 99.1 percent of usable storage.

As of February 28, 2006 the average ground water level in eight reported USGS observation wells in the Pennsylvania portion of the basin was above the long-term average. Water levels expressed as 30-day moving averages at six of these wells were above their normal ranges for this time of the year. Water levels at the remaining two wells were within their normal ranges. Water level at the Cumberland County, New Jersey coastal plain observation well was slightly above the normal range for the month of February. Water level at the New Castle County, Delaware coastal plain observation well was within its normal range for the month of December, the last full month for which observations were available. The long-term USGS observation well in Kent County, Delaware was recently discontinued.

During the month of January 2006, the location of the seven-day average of the 250-parts per million (ppm) isochlor, also known as the "salt line," ranged from river mile (RM) 38 to RM 69. The normal location of the salt line during January is RM 68, a location one mile downstream of the Delaware Memorial Bridge.

As of February 27, 2006, the salt line was located at RM 69 near the Delaware Memorial Bridge. This location is one mile upstream of the normal location for February.

Executive Director's Report. Ms. Collier's remarks are summarized below:

- *Fiscal Activities.* Staff has applied for a number of grants, including a Pennsylvania Growing Greener Grant to support development of the Pennsylvania Water Resources Plan. Growing Greener Grant proceeds would enable the Commission to develop a conservation plan in collaboration with the Susquehanna River Basin Commission, in addition to developing Delaware River Basin components of the state plan. Staff members also have traveled to Albany to encourage New York State Senate and Assembly members to furnish the Commission's full fair share of the signatory funding for Fiscal Year 2007 in accordance with New York's obligation under the Delaware River Basin Compact. Ms. Collier and Mr. Tudor visited Washington, D.C. together and separately for meetings with members and staffers from Basin districts. Topics of discussion included a proposed federal credit against the Commission's debt payments to the U.S. Treasury for its share of the construction, operation and maintenance costs of storage at the Blue Marsh and Beltzville Reservoirs. Such a credit is proposed to be included in the next Water Resources Development Act. Ms. Collier and Mr. Tudor also discussed with legislators the possibility of a straight appropriation for DRBC operating expenses and key projects, including: (1) flood mitigation planning; (2) PCB clean-up activities in accordance with a soon-to-be-issued report of the Commission's TMDL Implementation Advisory Committee; and (3) support for the The Nature Conservancy's effort to reinstate an earmarked $400,000 to support fishery studies in the Upper Basin.

- *Response to Interested Parties.* The Commissioners' meeting materials include a letter drafted in part by Operations Branch Head Rick Fromuth on the subject of the 2005 floods. Ms. Collier praised Rick's work on the letter.

- *River Reporter Article by Ms. Collier*. *The River Reporter*, a newspaper based in Narrowsburg, New York, printed a guest column by Ms. Collier offering her vision for the Upper Basin. The column was part of a series of guest columns published by the paper in conjunction with a visioning study being conducted in the region.

- *Exelon Environmental Projects.* With funds Exelon saved through an experimental flow project on the Schuylkill River, the company created a Schuylkill River Restoration Fund to provide grants within the Schuylkill Basin in connection with acid mine drainage. Exelon held a press event in January, highlighting the company's partnership with the Schuylkill River Heritage Area.

- *New Jersey Flood Mitigation Task Force.* The New Jersey Flood Mitigation Task Force has issued its draft report on flood loss prevention. A link to the report is posted on the DRBC website. The report is now in a public comment period that runs through March 15th. Public meetings on the report are scheduled.

- *DRBC Website.* The Commission's website now includes a Project Review Application Status Page, where applicants and interested parties can find the status of docket and permit applications submitted to the Commission. The page will be updated at least three weeks. DRBC's website also provides a list of all the watershed associations within the Delaware River Basin.

- *Upcoming Events.*
    - The annual dinner of the Water Resources Association of the Delaware River Basin (WRA) is scheduled for April 5, 2006 in Philadelphia.
    - Two activities are planned within the Schuylkill River Basin: First, the Schuylkill Watershed Congress will be held at the Montgomery County Community College campus in Pottstown on Saturday, March 4. Second, DRBC will be hosting the annual workshop of the Schuylkill Action Network on October 12.
    - DRBC's Water Snapshot 2006 will take place in April in connection with Earth Day. Water Snapshot involves school children, teachers, Boy Scout troops, and other education and youth organizations in learning how to monitor streams.
    - The Delaware River Sojourn will take place during the third week of June, beginning on June 18, 2006. Flyers are now available.
    - The DRBC is featured in a report entitled *Interstate Water Solutions for the New Millennium*, recently issued by the Interstate Council on Water Policy (ICWP). Bob Tudor is DRBC's representative on this organization. Copies of the report can be obtained through our Public Information Office.

General Counsel's Report. Mr. Warren reported on two matters: the Metal Bank Superfund litigation and the Warren County Municipal Utilities Authority hearing request. The Metal Bank Superfund site in Northeast Philadelphia is a former transformer and capacitor disposal facility at which PCBs are the primary contaminant of concern. The United States commenced litigation at the site in 1980. This year EPA has negotiated a proposed consent decree with the defendant owners and a group of third-party defendants, consisting primarily of utility companies. In the view of staff the remedy proposed in the consent decree is likely to reduce significantly the PCB loadings from the site to the river. Staff has expressed concerns,

however about whether the remedy contains adequate monitoring provisions and will ultimately reduce PCB loadings sufficiently to prevent releases from the site from causing exceedences of the Estuary human health water quality criteria for PCBs. Because of these concerns, the Commission, Pennsylvania and New Jersey moved to intervene in the litigation between EPA and the defendants, while informing the court that we wanted to see the consent decree go forward and remediation commence. The judge suggested at one a status conference that DRBC and the states attended that all three potential interveners move to withdraw their petitions. The court simultaneously proposed that the EPA and the Department of Justice reiterate that they would consult closely with each of the proposed interveners on a monitoring plan and throughout implementation of the remedy. He stressed that if we wished to make any proposals we could make those to the court through the United States and could also speak directly to the court in the event that we believe the consultative process is not proceeding according to plan. DRBC and the states accepted the judge's recommendation and moved to withdraw our motion to intervene. The court granted this request without prejudice. The court has scheduled another status conference to take place within 30 days of EPA approval of the remedial action work plan. The proposed interveners have been invited to attend that status conference. Bill Muszynski and Tom Fikslin will work closely with the EPA remediation project manager to comment on the remedial design. Thus, it is our view that the Commission as well as the states will have input into the design to help insure that the remedy is adequate in our view. Meanwhile, the remedy will go forward, potentially reducing PCB loadings sooner. We are pleased with the way this matter has been resolved and hope that we can continue to work cooperatively with EPA on a going-forward basis.

The second matter involves a docket issued to the Warren County Municipal Utilities Authority ("Authority") on December 7, 2005, which staff refers to sometimes as the Belvidere docket. The Commission received an untimely notice of appeal in the matter shortly after the 30-day appeal period had run. The Authority's primary complaint, which it failed to make prior to issuance of the docket, is that it may not be able to meet the limit for total dissolved solids (TDS) contained in the docket. Project Review Branch Head Bill Muszynski has agreed to meet with representatives of the Authority to try to resolve the problem, and these meetings are ongoing. Mr. Warren recommended that the Commissioners not take any action today upon the Authority's untimely request for an appeal, in order to allow time for staff and the Authority to work out their differences. He said that staff is optimistic this can be accomplished. If for some reason the problem cannot be worked out, however, then the Commissioners can decide at their May meeting whether to grant the untimely appeal, which would require a unanimous decision of the Commissioners.

Public Hearing: Project Review Applications. Mr. Muszynski explained that the hearing would cover 29 dockets for the Commission's consideration. Three of the projects involved are located in Delaware, one is in New York, sixteen are in New Jersey and nine are in Pennsylvania. Some of the projects are located in the drainage area to Special Protection Waters, the Ground Water Protected Area or New Jersey's Critical Water Supply Area. Seven of the projects involve ground water remediation.

Brief descriptions of the dockets follow, in three categories: Nine entail renewals with no substantive changes (e.g., a replacement well with no increase or decrease in allocation); eight constitute renewals with substantive changes (e.g., an increase or decrease in an authorized withdrawal or discharge); and twelve are new projects (projects not previously reviewed by the Commission).

- *Renewals with No Substantive Changes (9).* Mr. Muszynski briefly described docket items 1 through 9. The Commission received no comments on these dockets, and Mr. Muszynski recommended that all nine be approved.

  1. DSM Nutritional Products, Inc. D-85-14-3. An application for renewal of a ground water and surface water withdrawal project to continue to supply up to 120 mg/30 days of water for industrial process, potable and sanitary uses and ground water remediation purposes to the applicant's manufacturing facility from six existing wells in the Pleistocene Alluvial Formation and one existing surface water intake located on the main stem of the Delaware River. The project is located in the Delaware River Watershed in White Township, Warren County, New Jersey.

  2. J. G. Townsend, Jr. & Co. D-89-48-3. An application for the renewal of a ground water withdrawal project to continue withdrawal of 15 million gallons per thirty days to supply the applicant's vegetable processing facility from existing Wells Nos. 1 and 5 in the Columbia Formation. The project is located in the Savannah Ditch Watershed in the Town of Georgetown, Sussex County, Delaware.

  3. Borough of Shoemakersville D-90-7 CP-3. An application for the renewal of a ground water withdrawal project to continue withdrawal of 7.5 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 1, 3, 4, 5 and 6 in the Hamburg Formation. The project is located in the Schuylkill River Watershed in Shoemakersville Borough and Perry Township, Berks County, Pennsylvania.

  4. BP Oil Company D-91-32 (G)-2. An application for the renewal of a ground water decontamination project to withdraw up to 1 million gallons per day for treatment and discharge to the Delaware River through an existing outfall in DRBC Water Quality Zone 4. The project is located at the former BP Oil Company Refinery located off of Mantua Avenue in Paulsboro Borough, Gloucester County, New Jersey. Up to 30 mg/30 days of ground water is withdrawn from existing Wells Nos. R-4A, R-5A, R-6A, R-8, R-9 and R-10 and from new Wells Nos. R-11 and R-12, all located in New Jersey Critical Area 2 of the Potomac-Raritan-Magothy Formation.

  5. E. I. du Pont de Nemours and Company D-93-19-2. An application for renewal of a surface and ground water withdrawal project to continue withdrawal of 1,126 mg/30 days to supply the applicant's industrial facility from existing Wells Nos. INT-10B, R-5A, INT-103A, INT-102A, Q13-R01C, Q13-R01D, WS-1, M-259, M-257, CP-2, CP-4, WS-2, R-7, DW-8R, CL-1 CL-2, CL-3, and CP-7 and Salem Canal Surface Water Intake No. III. The project is located in the Glacial/PRM Aquifer and the Salem Canal Watershed in Carneys Point, Mannington and Pennsville Townships, Salem County, New Jersey.

  6. Township of Lower Municipal Utilities Authority D-94-21 CP-2. An application to discontinue the withdrawal of water and close Wells Nos. AP-2 and 3 in the applicant's public water supply system, which have become unreliable sources of supply, and to withdraw water from replacement Wells Nos. 6 and 7. The total withdrawal from

replacement Wells Nos. 6 and 7 and existing Wells Nos. 1, 2 and 4 remains limited to 93 mg/30 days. Well No. 7 is located in the Atlantic Basin. The project is located in the Cohansey Formation in the Delaware River Watershed in Lower Township, Cape May County, New Jersey.

7. Meter Services Company D-94-49 CP-2. An application for renewal of a ground water withdrawal project to continue to supply up to 3.6 mg/30 days of water to the applicant's public water supply distribution system from existing Wells Nos. 1 and 2 in the Brunswick Formation. The project is located in the Mill Creek Watershed in Buckingham Township, Bucks County, Pennsylvania, in the Southeastern Pennsylvania Ground Water Protected Area.

8. Rosenberger's Dairies, Inc. D-95-1-2. An application for the renewal of a ground water withdrawal project to continue withdrawal of 3.4 mg/30 days to supply the applicant's dairy processing facility from existing Wells Nos. R-1, R-3 and R-4 in the Brunswick Formation. The project is located in the West Branch Neshaminy Creek Watershed in Hatfield Township, Montgomery County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

9. Clement Pappas & Co., Inc. D-95-37-2. An application for renewal of a ground water withdrawal project to continue to supply up to 73.4 mg/30 days of water to the applicant's food processing facility from existing Well No. 6B in the Kirkwood-Cohansey Formation. The project is located in the Cohansey River Watershed in Upper Deerfield Township, Cumberland County, New Jersey.

Mr. Donnelly invited questions or comments on the nine docket renewals. Hearing none, he called for a motion to approve the nine renewals involving no substantive changes. Mr. Nuffer so moved, Lt. Col. Ruch seconded his motion, and all nine dockets were approved by unanimous vote.

- *Renewals with Substantive Changes (8).* Mr. Muszynski read brief descriptions of docket items 10 through 17.

10. Sybron Chemicals, Inc. D-85-5-3. An application for the renewal of a ground water withdrawal project to decrease withdrawal from 77 mg/30 days to 34 mg/30 days to supply the applicant's industrial facility from existing Wells Nos. 4, 5 and EQ106 in the Middle Raritan and Mt. Laurel/Wenonah Aquifers. The project is located in the West Branch Rancocas Watershed in Pemberton Township, Burlington County, New Jersey.

11. Willingboro Municipal Utilities Authority D-87-42 CP-3. An application for the renewal of a ground water withdrawal project and for an increase in withdrawal from 300 mg/30 days to 310 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 1, 6, 9, 10, and 11 and new replacement Well No. 5A. Replacement Well No. 5A is located in the Potomac-Raritan-Magothy Formation. The project is located in the Rancocas Creek Watershed in Willingboro Township, Burlington County, New Jersey.

12. PPL Martins Creek, LLC D-87-56-2. An application to update the existing docket to reflect operational and structural modifications to Ash Basin No. 4 as a result of an ash slurry spill which occurred from Ash Basin No. 4 due to a wooden stop-log failure. Approximately 100 million gallons of ash slurry was released from Ash Basin No. 4 from August 23-30, 2005. In addition, this project includes emergency remediation activities that PPL conducted in response to the ash slurry spill. Emergency approval was granted by letter dated October 12, 2005 for this project. The project discharges to the Delaware River in DRBC Water Quality Zone 1D, which is designated Special Protection Waters. The facility is located in Lower Mount Bethel Township, Northampton County, Pennsylvania.

    Mr. Nuffer asked whether the draft docket contained any provision to address the possibility that Pennsylvania might not renew PPL's NPDES permit. Mr. Muszynski confirmed that the docket allows DRBC to make modifications to the docket if necessary.

13. E. I. du Pont de Nemours and Company D-88-85-2. An application to update and renew an existing industrial waste treatment plant (IWTP) discharge docket, which includes clarifying the Area Served and granting preliminary approval for the installation of a new outfall extension and diffuser. The IWTP, which is part of DuPont Chambers Works, a large multi-product chemical manufacturing plant, discharges to Zone 5 of the Delaware River. The IWTP is classified by EPA as a Centralized Waste Treatment system. The facility is located in Pennsville and Carneys Point, Salem County, New Jersey. The application does not request the Commission's approval to accept VX hydrolysate for treatment and discharge at the DuPont Chambers Works IWTP.

    Mr. Wolfe asked whether it would be accurate to say that the draft docket does not authorize the acceptance of VX hydrolysate and that if DuPont were to seek to accept VX hydrolysate for treatment, it would need to apply to the Commission for a docket modification. Mr. Muszynski confirmed this. He added that the Commission had also received a public comment on the matter and had modified the docket to make these points explicit. The docket would not allow DuPont to accept VX hydrolysate for treatment and disposal at the Chambers Works plant without a docket modification approved by the Commission. Mr. Donnelly added that this docket condition mirrored a requirement imposed by New Jersey in its NPDES permit.

14. Hamburg Municipal Authority D-92-73 CP-2. An application to expand a 1.0 mgd wastewater treatment plant (WWTP) to treat 1.5 mgd, while continuing to provide advanced treatment via activated sludge and chemical addition processes. The WWTP will continue to serve the Borough of Hamburg, and portions of Tilden and Windsor townships, all in Berks County, Pennsylvania. The proposed expansion will enable the docket holder to serve the Borough of Port Clinton in Schuylkill County, Pennsylvania as well. The WWTP is located in Hamburg Borough, just east of State Route 61 on the east bank of the Schuylkill River, to which the plant will continue to discharge. At the

WWTP outfall, the Schuylkill River is conditionally designated as "Modified Recreational" in the DRBC Comprehensive Plan.

15. Purex Industries, Inc. D-93-34 (G)-2. An application for the renewal of a ground water withdrawal project to decrease withdrawal from 11.23 million gallons per thirty days (mg/30 days) to 7.78 mg/30 days to supply the applicant's ground water remediation project from existing Wells RW-2, RW-7, RW-9, RW-10, and RW-13 and new Wells MP-7, MP-19 and MP-30 in the Kirkwood-Cohansey Aquifer. The project is located in the Maurice River Watershed in the City of Millville, Cumberland County, New Jersey.

16. Jackson Township Municipal Utilities Authority D-94-18 CP-2. An application for the renewal of a ground water withdrawal project and increase in the applicant's withdrawal from 26.42 mg/30 days to 30 mg/30 days to supply the Six Flags Great Adventure Hurricane Harbor water amusement park from existing Wells Nos. 7, 10 and ASR-12 in the Upper Potomac-Raritan-Magothy Formation. The project is located in the Crosswicks Creek Watershed in Jackson Township, Ocean County, New Jersey.

17. Sunny Dell Foods, Inc. D-2000-23-2. An application to increase the discharge from the applicant's industrial waste treatment plant (IWTP) from 0.05 mgd to 0.072 mgd; modify effluent limits associated with the Christina River total maximum daily loads for $CBOD_5$, ammonia, phosphorus and total nitrogen; and modify an existing contact cooling water system discharge of 0.09 mgd. Both the IWTP effluent and contact cooling water are discharged to the West Branch Red Clay Creek. The facility is located in Kennett Township, Chester County, Pennsylvania.

Mr. Muszynski recommended that the eight docket renewals involving substantive changes be approved. In response to a question from Mr. Nuffer, Mr. Muszynski explained that the Commission had received no written comments other than the one noted previously on the E. I. du Pont de Nemours and Company docket. He reiterated that in response to that comment, staff had made explicit the condition that DuPont would be required to submit a separate docket application to treat and discharge VX hydrolysate at the Chambers Works plant.

Mr. Donnelly invited comments from the public. Mary Ellen Noble of the Delaware Riverkeeper Network asked whether DuPont had responded to the Commission's letter request for chronic toxicity monitoring at an internal monitoring point at the Chambers Works IWTP. Ms. Collier explained that she had sent DuPont a letter on February 17 asking for written confirmation that DuPont agrees to sample for chronic toxicity at an internal monitoring location. Ms. Collier explained that the Commission has requested similar testing by a number of facilities in order to develop information about ambient toxicity in the Estuary. DuPont's docket application was accompanied by a cover letter stating that DuPont would work with the Commission on this study. Ms. Collier said she subsequently received an email from Dr. Ann Masse of DuPont confirming that the company would conduct the requested sampling and would work with the Commission on sampling methodologies.

Maryanne McGonegal of Common Cause Delaware ("Common Cause") said she had serious concerns about the DuPont Chambers Works docket. She noted that the docket would approve

an outfall extension and diffuser, which Common Cause sees as a first step in DuPont's pursuit of approval to discharge treated VX hydrolysate into the Delaware River. Although the Chambers Works IWTP is located in New Jersey, the plant currently discharges to waters of the State of Delaware, and the proposed extension and diffuser also would be located in Delaware. Ms. McGonegal emphasized that the potential treatment and discharge of VX hydrolysate from the Chambers Works plant is an extremely important issue. In the view of Common Cause and many Delaware citizens, construction of the outfall extension and diffuser should not be permitted to proceed before many more questions are answered. Ms. McGonegal said that Common Cause is involved in an issue related to DuPont's manufacturing plant in Edge Moor, Delaware. In connection with that matter, she alleged, DuPont has misled the public and has made special deals with Delaware's Department of State and Department of Natural Resources and Environmental Control (DNREC). The experience of Common Cause in the Edge Moor matter suggests to Ms. McGonegal that after making a small inroad such as the outfall extension and diffuser approval by DRBC, DuPont will engineer secret deals with government to obtain what it wants. Ms. McGonegal said that hundreds of people have testified in opposition to DuPont's VX treatment proposal because of its potential adverse impact on the Delaware River. Common Cause believes the river is terribly polluted already by the DuPont Company. She dislikes the wording of the docket, which states that DuPont "has not requested the Commission's approval" to treat and discharge VX. Once the extension and diffuser are approved, Ms. McGonegal conjectured, DuPont may not need additional approvals to discharge treated VX into the water. She said that the Commission should obtain greater clarification about DuPont's intentions before it approves the docket, and reiterated that on the basis of experience with public hearings on DuPont activities in the past, Delaware's citizens have no confidence that DuPont will safeguard the public interest.

John Flaherty, also of Common Cause Delaware, reiterated that although the Chambers Works plant is located in New Jersey, the proposed extension, outfall and diffuser would be located within the State of Delaware. He added that these facilities also would be situated within the limits of the City of Wilmington and would require a subaqueous lands permit from the State. He asked the Commission whether the State or City had been notified of the proposed docket and whether either had submitted comments on the docket. A DRBC meeting and hearing notice, including a description of the DuPont project, was published in the *Federal Register* and the *Pennsylvania Bulletin*, as well as on the Commission's website. The date of the Commission's public meeting and hearing was announced in the *Delaware Register of Regulations*, but this publication refers readers to the Commission Secretary for additional information and does not print a list or description of the dockets scheduled for hearing. Mr. Muszynski confirmed that the public notice described the Chambers Works facility as being located in New Jersey. He said the Commission had consulted DNREC on the proposed docket, but had not received written comments from the State. Mr. Flaherty asked the Commission to defer action on the docket until the appropriate authorities in Delaware and Wilmington could be notified and consulted.

Mr. Donnelly asked representatives from DuPont whether the company had submitted an application to DNREC for a subaqueous lands permit in connection with the proposed outfall extension and diffuser. Marc Gold, an attorney representing DuPont, said he did not know whether an application had been made. He added that the Commission's docket alone would not

authorize construction of the diffuser. Rather, as the docket states, DuPont must obtain all other required permits and approvals before the extension and diffuser can be built. He said that if an additional permit is required from Delaware, than an application will be made to Delaware. Mr. Muszynski said that the docket also contains a condition that provides that the final plans and specifications for the diffuser must be submitted to the Commission for approval prior to construction. Mr. Flaherty asked that the record be made to show that the proposed project is a Delaware project and not a New Jersey project.

Mr. Wolfe said that Mr. Flaherty had raised an important point. He said that because the facility is located in New Jersey while the discharge occurs in Delaware, New Jersey and Delaware had consulted extensively on the docket. One of the primary reasons for issuing a Commission docket, he said, is to make sure that if any dispute between New Jersey and Delaware arises in connection with the Chambers Works discharge, Delaware can resort to the Commission as a forum for resolving the matter.

Ms. McGonegal asked Chairman Donnelly whether DuPont would need to apply to the State of Delaware for a subaqueous lands permit, given that the Chambers Works discharge is located in Delaware. She added that this subject should have come up in discussions between Delaware and New Jersey. Mr. Donnelly confirmed that a subaqueous lands permit is a type of permit that must be obtained from the State, but he was not aware of whether DuPont had submitted an application. In response to a second question from Ms. McGonegal, Mr. Donnelly said that he was not aware of any discussion between DNREC and the City of Wilmington about the proposed outfall extension and placement of a diffuser within the City limits. Ms. McGonegal described the DuPont Chambers Works project as one of the biggest issues facing the State of Delaware and the City of Wilmington and suggested that the City had not received adequate notice of the project. Mr. Flaherty said for the record that some citizens of Delaware object to the process being used to review the DuPont Chambers Works project.

Mr. Donnelly reiterated that DRBC's docket approval does not allow the outfall extension and diffuser project to go forward, nor does it authorize DuPont to accept and treat VX hydrolysate. He added that New Jersey's permit likewise does not authorize either of these two activities. He said that before DuPont could accept and treat VX hydrolysate, the company would need to obtain a docket amendment from the Commission and a major modification of its NPDES permit from the State of New Jersey. Both agencies would be required to furnish public notice, and an approval by either agency would be subject to a public hearing. In addition, the construction of an outfall extension and diffuser would require a subaqueous lands permit from the State of Delaware. Mr. Donnelly said that neither he nor Mr. Gold was aware that DuPont had yet made application to DNREC for this activity. Mr. Donnelly assured Ms. McGonegal that if and when DuPont were to submit such an application to DNREC, the application would be duly noticed and an opportunity for a hearing would be provided.

Ms. McGonegal said that members of the public who have dealt with DuPont in the past are concerned that the diffuser and extension are in reality the first step in the VX treatment and discharge project. She noted that the draft docket was silent as to any need for the extension and diffuser for DuPont's current discharge from Chambers Works. Mr. Nuffer asked whether construction of the proposed diffuser would improve the treatment process for the material

currently accepted by the plant and whether it would better protect Estuary water quality. Mr. Muszynski confirmed that it would. He added that the State of New Jersey and the DRBC both have concluded that the current treatment process is adequate; however, the diffuser would make it better. Mr. Nuffer asked if he understood correctly that future actions on the part of DuPont with respect to treatment of VX hydrolysate remain subject to a series of approvals by New Jersey, Delaware and the Commission, and that the action currently under consideration by the Commission would have a beneficial impact on water quality. Mr. Muszynski confirmed this.

Mr. Muszynski explained that the proposed docket approval is not for the extension and diffuser alone, but for the entire treatment plan. The current docket for the Chambers Works facility, one of the largest commercial industrial waste facilities in the country, was approved in 1991 and is now more than 15 years old. The Commission seeks to update the docket and make it consistent with the new NPDES permit. The new docket includes an updated discussion of the plant's treatment process and the materials accepted for treatment. It references special EPA requirements approved for centralized waste treatment facilities. It imposes conditions on the approximately 100,000 gallons per day of material brought in from outside the Basin and on the treatment and discharge of approximately 2.7 million gallons per day (mgd) of municipal wastewater from Carneys Point and Penns Grove Township. It also ensures that the proposed outfall extension remains subject to approval of design specifications to be submitted to the Commission. The docket states explicitly that a separate Commission approval is required before VX hydrolysate can be treated at Chambers Works. Mr. Muszynski added that the current docket authorizes a flow of 49 mgd, more than double the 17 mgd of actual flow from the plant. The proposed docket restricts the plant to 17 mgd and modernizes the Commission's other requirements on the facility.

Richard Schneider, a private citizen of Delaware, said is disturbed that the Commission allows out-of-Basin waste to be treated and discharged to the Delaware River when the river's water quality is already impaired. He pointed out that allowing the treatment and discharge of out-of-Basin waste can only make the goal of a clean Estuary more remote. Mr. Wolfe said that Mr. Schneider had touched on another key reason for the Commission to issue a revised docket. He said the docket would not stop the importation of out-of-Basin waste but would improve the Commission's ability to ensure no harm is done to the river as a result of such importation. Mr. Wolfe said that DuPont had originally disputed the need for a docket revision, and DRBC insisted that the docket be updated to provide for greater Commission oversight.

Lt. Col. Ruch said that the objectors seemed to mistrust the Commission. Ms. McGonegal said that she had not expressed mistrust of state agencies or the DRBC. She reiterated that Common Cause and other citizens of Delaware do not trust the DuPont Company, which in her view uses its money and influence to fight against people with very little of either. She said that she has found Mr. Donnelly and other Delaware officials as well as New Jersey officials to be extremely helpful. She added that New Jersey Governor Jon Corzine also had been helpful in his former role as a Senator. Lt. Col. Ruch asked Ms. McGonegal to believe the Commissioners when they assured her that the treatment and disposal of VX hydrolysate could not go forward based upon today's docket approval.

Ms. Noble asked whether a vote by the State of Delaware in favor of the Commission docket would preclude Delaware from denying DuPont a subaqueous lands permit if it should eventually apply for one. Mr. Donnelly said he thought not, since approval of the subaqueous lands permit would be an independent action subject ultimately to a decision by Delaware's Secretary of the Environment. That decision would entail a separate public process regardless of Mr. Donnelly's vote on the Commission docket. Mr. Muszynski read aloud Condition "o" of the draft docket, which states, "Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project."

Mr. Donnelly asked if there were any other questions. Susan Cook, a concerned citizen, asked whether any studies had been conducted to identify the contaminants released to the Delaware River as the result of an ash slurry spill from a riverside basin at PPL's Martins Creek facility in August of 2005. Mr. Muszynski said that samples were collected by DRBC, the states and PPL for several months following the spill. Mr. Tudor said that DRBC intends to post on its website all of the data collected in connection with the event, including data developed by the DRBC, New Jersey, Pennsylvania, the U.S. Geological Survey, the City of Philadelphia, and PPL. He said the data likely would be posted within three weeks, following a meeting among the investigators to confirm that all of it is correctly presented. Ms. Cook asked how the ash basin was being repaired, noting that it was difficult for her to imagine how the ash could be adequately contained in this location immediately adjacent to the river, particularly in light of recent flooding. She asked what was being done to prevent future spills. Mr. Muszynski said that prior to the August spill, the ash basin lacked a valve that could be shut off in the event the logs containing the slurry should crack or break. He said that such a valve had since been installed. Although this measure cannot guarantee water tightness, PPL has installed a second valve downstream of the first, on a manhole. Thus, there are now two valves, in addition to the use of reinforced concrete where wood was used in the past. Mr. Muszynski said that these measures would dramatically reduce the possibility of another spill. Ms. Cook asked why the risk could not be completely eliminated. Mr. Muszynski said that it is difficult to obtain 100 per cent water tightness in this type of operation.

Mr. Muszynski recommended that the Commission approve the eight dockets. Mr. Donnelly requested that a vote be taken on each docket separately. Mr. Donnelly called for a motion to approve Docket Item No. 10 (Docket D-85-5-3) for Sybron Chemicals, Inc. Mr. Nuffer so moved, Lt. Col. Ruch seconded his motion and the project was approved by unanimous vote.

Mr. Donnelly next called for a motion to approve Docket Item No. 11 (Docket D-87-42 CP-3) for Willingboro Municipal Utilities Authority. Mr. Nuffer so moved, Mr. Gast seconded his motion and the project was approved by unanimous vote.

Mr. Donnelly next called for a motion to approve Docket Item No. 12 (Docket D-87-56-2) for PPL Martins Creek, LLC. Mr. Gast so moved, Mr. Wolfe seconded his motion and the project was approved by unanimous vote.

Mr. Donnelly called for a motion to approve Docket Item No. 13 (Docket D-88-85-2) for the E. I. du Pont de Nemours and Company, the Chambers Works docket. Mr. Wolfe so moved, Lt. Col. Ruch seconded his motion and the project was approved by majority vote. Mr. Donnelly abstained from

voting in recognition of the public's concerns about the subaqueous lands permit. Mr. Nuffer added that his rationale for voting "yes" was to bring the docket up to date. He said the Commission believed it was important to update the docket and that it had fought with DuPont to accomplish this. He said he had great faith that the Commission was acting in the public interest. Mr. Wolfe said that New Jersey shared these views.

Mr. Donnelly called for a motion to approve Docket Item No. 14 (Docket D-92-73 CP-2) for the Hamburg Municipal Authority. Mr. Nuffer so moved, Lt. Col. Ruch seconded his motion and the project was approved by unanimous vote.

Mr. Donnelly called for a motion to approve Docket Item No. 15 (Docket D-93-34 (G)-2) for Purex Industries, Inc. Mr. Nuffer so moved, Lt. Col. Ruch seconded his motion and the project was approved by unanimous vote.

Mr. Donnelly called for a motion to approve Docket Item No. 16 (Docket D-94-18 CP-2) for the Jackson Township Municipal Utilities Authority. Mr. Nuffer so moved, Mr. Gast seconded his motion and the project was approved by unanimous vote.

Mr. Donnelly asked for a motion to approve Docket Item No. 17 (Docket D-2000-23-2) for Sunny Dell Foods, Inc. Mr. Nuffer so moved, Mr. Gast seconded his motion and the project was approved by unanimous vote.

- *New Projects (12).* Mr. Muszynski read brief descriptions of docket items 18 through 29.

18. Swedesboro, Inc. (t/a Beckett Golf Club) D-87-77-1. An application for a surface water withdrawal project to supply up to 4.0 mg/30 days of water for supplemental irrigation of the applicant's golf course from existing Intakes Nos. 1 and 2. The surface water intakes are located on two on-site ponds. The project is located in the Oldmans Creek Watershed in Woolwich Township, Gloucester County, New Jersey. A Notice of Application Received (NAR) for this project was previously published on November 5, 1987 under docket number D-87-77. The current NAR reflects project revisions made since the 1987 application.

19. Mercer County Correction Center D-2002-50 CP. An application for approval of a ground water withdrawal project to supply up to 4.333 mg/30 days of water to the applicant's correctional facility from existing Wells Nos.1, 3 and 4 and new Well No. 5, all in the Passaic Formation., The project is located in the Delaware River Watershed in the northwest corner of Hopewell Township, Mercer County, New Jersey.

20. Holman Enterprises – RMP Facility D-2004-25 1. An application for approval of a ground water withdrawal project to pump up to 7.45 million gallons per 30 days (mg/30 days) of water to be treated by the applicant's ground water remediation project from Wells Nos. MW-7D, MW-19D, MW-23D, R-77D, R-78D, R-79D, R-80D and R-81D in the Potomac-Raritan-Magothy Formation. The project is located in the Pennsauken Creek Watershed in Pennsauken Township, Camden County, New Jersey.

21. Town of Bethel D-2005-19 CP-1. An application to construct a groundwater/leachate seep collection and treatment system to serve the Town of Bethel Landfill, an inactive and officially closed domestic waste landfill located on a 10-acre parcel of municipal property off Old White Lake Turnpike, about 0.25 miles east of its intersection with State Route 55 in the Town of Bethel, Sullivan County, New York. Following aeration and sedimentation, up to 0.035 mgd of wastewater will be applied to a subsurface absorption bed for final processing and disposal. In addition to proposed Discharge Monitoring Reports, the existing groundwater monitoring well network will be used to assure that the proposed treatment system does not impair groundwater quality. The project is located in the Mongaup River Watershed upstream from Swinging Bridge Reservoir and in the drainage area of DRBC Special Protection Waters. Although the Town of Bethel Landfill is capped with impervious materials, it is an unlined facility with residual leachate seepage that currently flows overland to the West Branch Mongaup River without any prior treatment.

22. Chadds Ford Township D-2005-22 CP-1. An application to construct a 0.15 mgd WWTP to serve existing residents in a portion of Chadds Ford Township, Delaware County, Pennsylvania and future residents of the proposed subdivision at Camp Sunset Hill (Turner's Mill), also in Chadds Ford Township. The WWTP is proposed to provide advanced treatment via extended aeration and tertiary filtration prior to ultraviolet light disinfection and discharge to Harvey Run, a tributary of Brandywine Creek in the Christina River Watershed. Its proposed location is the intersection of US Route 1 (Baltimore Pike) and Ring Road, across from the Brandywine Battlefield State Park. The Pantos WWTP that currently serves Chadds Ford Village and the Painter's Crossing Condominiums is proposed to be converted to a pumping station, which will route up to 35,000 gallons per day of flow to the new WWTP.

23. Motiva Enterprises, LLC D-2005-23-1. An application for approval of a ground water withdrawal project to supply up to 6.7 mg/30 days of water to the applicant's ground water remediation project from new Wells Nos. 1 through 9 in the Kirkwood-Cohansey Formation. The project is located in the Maurice River Watershed in Franklin Township, Gloucester County, New Jersey.

24. Congoleum Corporation D-2005-25-1. An application to discharge an average of 168,000 gallons per day of non-contact cooling water from the applicant's tile floor manufacturing facility. The discharge is to a Hamilton Township municipal storm sewer, which discharges to Pond Run, a tributary to the Assunpink Creek. The facility is located in Hamilton Township, Mercer County, New Jersey.

25. Tidewater Utilities, Inc. D-2005-26 CP-1. An application for approval of a ground water withdrawal project to supply up to 1.427, 1.22 and 1.22 mg/30 days of water to the applicant's North Dover District public water supply distribution system from new Wells Nos. SF-01, SF-02 and KWE-02, respectively. The wells are all located in the Federalsburg and Cheswold aquifers. The total withdrawal from all wells will be limited to 3.85 mg/30 days. The project is located in the Leipsic River Watershed in Kent County, Delaware.

26. Tidewater Utilities, Inc. D-2005-27 CP-1. An application for approval of a ground water withdrawal project to supply up to 0.13, 3.51 and 0.065 mg/30 days of water to the applicant's Wild Quail District public water supply distribution system from new Wells Nos. WQ-01, WQ-02 and WQ-04, respectively. Wells Nos. WQ-01 and WQ-04 are located in the Frederica Formation and Well No. WQ-02 is located in the Piney Point Aquifer. The total withdrawal from all wells will be limited to 3.51 mg/30 days. The project is located in the St. Jones River Watershed in Kent County, Delaware.

27. Penns Grove Sewerage Authority D-2005-29 CP-1. An application to upgrade, but not expand, a 0.75 million gallon per day wastewater treatment plant (WWTP), which serves Penns Grove Borough, Salem County, New Jersey. The WWTP upgrade will provide two new final clarifiers with appurtenances. The existing final clarifiers require costly chemical additives to meet NJPDES permit limits, particularly during surge flow conditions. The two new final clarifiers should reduce or eliminate the need to add costly chemicals to meet permit limits. Penns Grove Sewerage Authority requested and was granted emergency approval by the DRBC on January 12, 2006 to implement the WWTP improvements expeditiously, in order to meet a construction grant deadline. The WWTP will continue to discharge to the Delaware River in DRBC Water Quality Zone 5 through the existing outfall.

28. Camp Ramah in the Poconos D-2005-30-1. An application to upgrade an existing seasonally operated WWTP by the addition of a new primary clarification process and a new aeration system. Seasonally, the WWTP discharges approximately 30,000 gallons per day to an unnamed tributary of Equinunk Creek, a tributary to the West Branch Delaware River. The facility is located in Buckingham Township, Wayne County, Pennsylvania.

29. U.S. Army Corps of Engineers, Philadelphia District D-2005-32 CP-1. An application to modify the Prompton Dam to safely pass the Probable Maximum Flood (PMF) of 111,000 cubic feet per second (cfs), based upon revised estimates of flow regimes for the 60-square mile drainage area. The original PMF flow of 81,500 cfs was calculated in the year 1949, prior to advancements in mathematical modeling. Primarily a flood control facility, Prompton Dam is located in Prompton Borough, Wayne County, Pennsylvania. The lake that it forms on the West Branch Lackawaxen River extends into Clinton Township, also in Wayne County. The project involves the widening of the spillway from 50 to 85 feet, constructing a fuse-plug in the spillway, upgrading the outlet works rip-rap, and constructing an embankment with material that will be excavated from the spillway. The project is located in the drainage area of DRBC Special Protection Waters and the Upper Delaware Scenic and Recreational River.

Mr. Muszynski recommended that the twelve dockets for new projects be approved. Mr. Donnelly explained, in the interest of full disclosure, that he is a member of the Wild Quail Golf and Country Club, the subject of Docket Item No. 26, for Tidewater Utilities, Inc. Mr. Donnelly explained that he does not live in on the property but does consume water provided in coolers on the golf course.

Hearing no comments or questions, Mr. Donnelly requested a motion for approval of the final group of dockets. Mr. Gast so moved, Mr. Wolfe seconded his motion, and the twelve dockets for new projects were approved by majority vote, with the Commissioner from New York, Mr. Nuffer, abstaining from voting on Docket Item No. 29 (Docket D-2005-32 CP-1) for the U.S. Army Corps of Engineers, Philadelphia District in connection with the Prompton Dam.

Public Hearing: Resolution to Approve the Commission's FY 2007 Budget and Work Plan. Mr. Gore reported that staff had prepared and circulated a work plan and expense and capital budgets for the period of July 1, 2006 through June 30, 2007. The current expense budget for the fiscal year ending 2007 projects aggregate revenues and expenses of $5,398,000. The projected signatory contribution is $3,470,000. The current signatory funding amounts have remained level since 2002. In addition to signatory contributions, revenue of $265,000 is expected for implementation by the Commission of the Southeastern Pennsylvania Ground Water Protected Area program of the Commonwealth of Pennsylvania. An additional $670,000 in funds will flow from the Clean Water Act Section 106 water quality grant. A transfer in the amount of $848,000 is anticipated from the Water Supply Storage Facilities Fund to cover activities associated with the water supply storage program and related water conservation and water demand activities. The Commission anticipates additional revenues of $410,000 to effectively balance the budget. Through the Water Supply Storage Facilities Fund the Commission anticipates revenues of $3,106,500 and expenditures of $2,728,000.

Mr. Nuffer explained to the audience that Governor Pataki's 2007 budget proposal calls for only $485,000 in funding for the Commission, or $123,000 short of New York State's fair share allocation. New York's signatory contribution to the Commission's operating expenses has remained unchanged – and below New York's fair share allocation – since 1999. Mr. Gore explained that the proposed resolution also provides for a fair share of $694,000 from the federal government. The federal government has not paid its fair share allocation of the Commission's operating expenses since 1997. Mr. Wolfe explained that Governor Corzine of New Jersey is expected to present his proposed budget to the state legislature during the month of March, and New Jersey's budget will likely be adopted in June. New Jersey is facing a budget deficit of between $4 billion and $6 billion against a total budget of $28 billion. For this reason, Mr. Wolfe said, he is uncertain of the exact sum to be appropriated by New Jersey for the DRBC.

Mr. Gore explained that the proposed resolution acknowledges that the approved signatory contributions remain subject to the budgetary processes of the respective signatory parties. Upon adoption of the resolution, the Executive Director is authorized to send certified copies of the Commission's approved budget to the principal budget officers of the signatory parties, together with a certified statement of the amount apportioned to each signatory. Mr. Donnelly said that the Commission has historically adjusted its operating expenditures as necessary to reflect changes in anticipated revenues.

Mr. Donnelly invited additional questions or comments. Ms. McGonegal of Common Cause Delaware asked Mr. Nuffer why New York has not contributed its fair share of the Commission's expense budget. Mr. Nuffer said he could not answer this question. Mr. Donnelly explained that the decision was controlled by New York's Governor and state legislature and not by Mr. Nuffer. Lt. Col. Ruch added that the federal government has not paid its fair share of the Commission's

operating expenses since 1997 because Congress has not appropriated the money. He added that if citizens of the Basin wish to see this change, they need to speak to their congressional representatives.

Mr. Nuffer added that New York State has asked the Commission to cut its costs in various ways. In response, the Commission has indicated with great specificity where reductions would occur if full signatory contributions were not received. He noted that staffing reductions have impaired the Commission's ability to carry out its mission. Ms. McGonegal asked whether Delaware and Pennsylvania have been contributing the amounts considered to be their respective fair shares. Mr. Donnelly confirmed that Delaware has. Mr. Donnelly noted to Ms. McGonegal that Delaware's appropriation for the DRBC is not included within the budget for DNREC. He explained that in the case of Delaware, the Commission communicates directly with the Controller General's office, and the Controller General's office makes its contribution directly to the Commission. Mr. Gast said that Pennsylvania has the distinction of being the only Commission member that has always paid its full fair share allocation of the Commission's operating expenses. Ms. McGonegal congratulated Pennsylvania. She said that she and other citizens of Delaware very much appreciate the efforts of Ms. Collier and the Commission. Mr. Nuffer said that as a Commissioner, he shares the sentiment expressed by Ms. McGonegal. He added that he has been very pleased with the Commission staff and leadership, including the way that it functions and the service that it has provided to the Basin as a whole and to New York State in particular. Ms. McGonegal thanked the Commission for responding to her questions and comments and reiterated that she and other Delawareans hold the Delaware River Basin Commission in high esteem.

Hearing no further questions or comments, Mr. Donnelly called for a motion to adopt the Resolution to Approve the Commission's FY 2007 Budget and Work Plan. A roll call vote was taken, with the following results: Pennsylvania: aye; New Jersey: aye; New York: aye; Delaware: aye; Federal Government: aye. Resolution No. 2006-1 was unanimously approved.

Resolution Amending the *Basin Regulations – Water Supply Charges* and the *Comprehensive Plan* Regarding Certificates of Entitlement. The proposed amendments to the Water Supply Charges regulations were published in the in the *Federal Register* on October 18, 2005, in the registers of the four Basin states between November 1 and November 7, 2005, and on the Commission's website. The Commission held a public hearing on the proposed amendments at its December 7, 2005 Commission meeting and accepted written comments through January 10, 2006. The Commission received no comments at its hearing and only one written comment during the comment period.

The single written comment received during the comment period was submitted by an individual identified as B. Sachau, with an address in Florham Park, New Jersey. The comment consisted of four sentences. A staff comment and response document containing a response to each of these sentences was provided to the Commissioners and is summarized here. Ms. Sachau first stated that there should be no entitlements. Staff understood this to mean that all water users should be charged for the water that they divert from the Basin. Staff points out in its response that Congress added Section 15.1(b) to the *Compact*, effectively grandfathering existing water users. The Commission's entitlement program was created to implement this congressional mandate. Thus, the Commissioners do not have the authority to abolish all entitlements immediately. However, the

Commission's program was designed to eliminate entitlements over time as users change, by limiting the ability of a certificate holder to transfer an entitlement.

The commenter's second sentence reads, "There should be a thorough re-review done with the 'people' getting 100% of the water." Staff's response is that the *Compact* contemplates that water will be managed for multiple purposes and goals, including, among others, municipal, industrial, agricultural, and recreational uses, propagation of fish and game, promotion of related forestry, soil conservation and watershed projects, hydroelectric power, and pollution abatement. Staff believes that one hundred percent of the Basin's water is in fact allocated to the public interest, in that it is allocated in accordance with the purposes set forth in the *Compact*.

The third comment is that "A one year lease for use of the water, revocable immediately, should be made part of any allowance of use of water by any profiteer." Mr. Warren explained that the Commission could enter into formal agreements with water users, and that this option was considered by the Commission early on. He noted that the administrative burdens involved in such arrangements would not necessarily result in any additional revenues to the Commission. Water users are subject to water supply charges in the absence of such agreements, and the dockets that the Commission issues do not convey permanent or irrevocable water allocation rights. Thus, he noted that the Commission has accommodated the commenter's purpose, if not in the manner the commenter proposed.

The commenter's final sentence states that "No profiteer should ever have any RIGHTS to lake [sic] water from the people." In response, it is noted that the Commission has an allocation program through which the Commission makes judgments as to whether or not the water that is being sought is allocable to a particular user in light of equitable and legal considerations. Mr. Warren said that staff does not believe that "profiteers" are taking water from the people. Rather, the Commission is allocating water to various persons and entities, some of whom make a profit, for public purposes consistent with the goals of the *Compact*.

Mr. Warren described several changes to the proposed resolution that were made as a result of comments by staff. First, language was added to Subsection D.4. to clarify that only the certificate holder and not other users at the certificate holder's facility, such as tenants, may rely on an entitlement to avoid paying water supply charges. The theory here is that the certificate holder is the only water user entitled to use the water free of charge. If the certificate holder supplies water to other users, such users should not be exempt from paying the charges, regardless of whether the other users are tenants. The second change is to add the words "at least one of the following" in subsections E.1. and E.2. of the proposed amended rule to emphasize that the extinguishment of the entitlement provisions are in the alternative. That is, the entitlement can be extinguished as long as one of the listed conditions applies; it is unnecessary to satisfy all of them. Third, Subsection E.1.(ii) has been revised to avoid use of the undefined term, "operational reasons." The thought here is that a facility might temporarily stop the flow of water for operational reasons, such as maintenance, that should not lead to extinguishment of an entitlement. The force and effect of the provision remain unchanged, but the ambiguity attributable to use of the undefined term has been clarified. Fourth,
a subsection included in the amendments as they were originally proposed has been eliminated. That subsection provided for terminating an entitlement based on a change in the use of the facility.

Mr. Warren said that he learned through discussions with staff that an entitlement has never been extinguished solely because of a change in use. Rather, an entitlement has been extinguished in such instances only if the change in use has been accompanied by sale of the facility or a change in ownership or control of the facility. Staff believes that in most instances a change in use will result in extinguishment of an entitlement because one of the other conditions will exist as well. However, in accordance with current practice, the mere fact that there is a change of use is not sufficient to extinguish the entitlement.

The definition of "change in ownership or control" at Subsection E.2. is the basic test for when an entitlement is extinguished. Staff has added to the list of factors to be considered in determining whether a change in ownership or control has occurred as a result of a transaction, consideration of whether the transaction would for purposes of the certificate holder's employee agreements constitute a change of ownership or control. In some mergers, for example, employee agreements are triggered and yet the certificate holder asserts that the transaction should not be considered a change in ownership or control for purposes of the Commission's regulations. The revised language now expressly authorizes the Commission to consider this factor.

Subsection E.3.(i) has been expanded to provide examples that are self-explanatory. Staff modified Subsection E.4., addressing voting practices of shareholders, because those voting practices may demonstrate that a shareholder that owns less than 50 percent of the company, for example, nonetheless has actual ownership or control of the company. For example, there might be a 75 percent majority shareholder whose practice it is not to vote shares. There may be another shareholder who owns 25 percent and always votes. That 25 percent shareholder in effect controls the company by way of voting shares, as a result of the practice whereby the larger shareholder in the company does not vote.

Finally, the Commission has always had an exception to the termination provision for a corporate reorganization. A corporate reorganization occurs when an ultimate parent owning 100 percent of a subsidiary that may in turn own additional subsidiaries, reorganizes within its own corporate family. The proposed amendments allow for such a reorganization without extinguishing the certificate. Staff has modified Subsection F.2. to clarify that such reorganizations can occur at any level of the corporate family. Staff views this clarification as important because a change in ownership or control is now expressly defined to include a change in ownership or control at a parent level.

Mr. Warren noted that because a great deal of money is involved, it makes sense for the Commission to clarify its entitlement regulation carefully. He recommended that absent any questions, the Commission adopt the resolution as now proposed.

Mr. Wolfe posited a hypothetical situation in which the ultimate parent corporation spins off a 5 percent beneficial interest in its subsidiary, which holds an entitlement. He asked Mr. Warren whether the transaction would qualify for the reorganization exception. Mr. Warren said that the reorganization exception was drafted very narrowly. The hypothetical transaction would effect a change of ownership and would not qualify for the exception because the corporate parent would no longer own 100 percent of the subsidiary; it would own only 95 percent.

Hearing no further questions or comments, Mr. Donnelly called for a motion to adopt the Resolution Amending the *Basin Regulations – Water Supply Charges* and the *Comprehensive Plan* regarding Certificates of Entitlement. Mr. Nuffer so moved, Lt. Col. Ruch seconded his motion, and Resolution No. 2006-2 was approved by unanimous vote.

Resolution Establishing the PMP Peer Review Advisory Committee. In May of 2005 the Commission adopted Resolution No. 2005-9, amending the DRBC's Water Quality Regulations by establishing pollutant minimization plan (PMP) requirements for point and non-point discharges of toxic pollutants following issuance of a TMDL or assimilative capacity determination (the "PMP Rule"). Mr. Tudor said that the rule initially applies to 45 dischargers identified as "Group 1" dischargers by the TMDL for PCBs in the Delaware Estuary, which was established by EPA in December of 2003. To date, the Commission has received 35 pollutant minimization plans. In addition to a PMP, the rule requires dischargers to submit annual progress reports detailing the PMP actions completed and assessing their effectiveness, including measurable load reductions relative to a site-specific baseline. When the Commission adopted the PMP Rule, it determined that it would be useful to create a PMP Peer Review Advisory Committee. This committee is proposed to evaluate the PMPs being implemented by the various types of dischargers in order to determine which approaches are demonstrated to be the most practicable and effective. The committee's findings are expected to influence the next generation of PMPs.

The Commission directed staff to consult with the PCB Implementation Advisory Committee (IAC) in creating the PMP Peer Review Advisory Committee. Staff has done that. It also consulted with the Commissioners at their meetings on July 20 and December 7, 2005 as to the composition and charge for the new committee. The draft resolution charges the committee with advising federal and state administrators of the National Pollutant Discharge Elimination System (NPDES) program and dischargers, in addition to the Commission, because each of these entities plays a significant role in implementing PMPs. Mr. Tudor summarized the four tasks proposed to be performed by the committee in fulfillment of its charge. These include (a) reviewing and evaluating the PMPs and annual reports submitted to regulators; (b) determining the effectiveness of minimization approaches and making recommendations as to the broader use, where appropriate, of the approaches shown to be most effective; (c) providing facility-specific advice for improving the PMPs and annual reports; and (d) providing guidance to individual dischargers. The proposed composition of the committee remains unchanged from when staff consulted with the Commissioners in December of 2005. Ten members are proposed, including six discharger members in various categories, and four experts or other interested parties that can potentially offer different perspectives and serve as resources to the other members. The resolution also addresses the term of membership and gives the committee the authority to establish subcommittees and to have an elected chair. Mr. Tudor suggested that it is time to begin assembling the committee.

Marc Gold, an attorney representing a group of industrial and municipal dischargers subject to the PMP requirement, asked the Commissioners to consider allowing additional time for review and comment on the proposed resolution, since it was not available for review in advance of the meeting. He said that he had a number of questions, including a concern about the relationship of the proposed tasks to the manner in which the PMP Rule is being enforced. He emphasized that the PMP Rule is unique and more workable than prescriptive requirements because it recognizes that owners and operators are most knowledgeable about their particular facilities, and it allows some

flexibility in the PMP approaches to be used. He said language of Section 2 of the draft resolution was unclear as to whether the committee would be providing advice or establishing standards that dischargers would be required to meet. He said he believed that as originally conceived, the PMP Peer Review Advisory Committee is intended to collect and distribute information based upon the experiences of individual dischargers. This would be appropriate in his view. If something else is intended, however, he said the Commission should take more time to consider it. He said that the dischargers he represents would prefer to look at the draft more closely and submit written comments on it before the Commission acts.

Mr. Wolfe noted that as the resolution states, the proposed committee would furnish advice to dischargers as well as to regulators. This advice would not be enforceable, but it could be considered by an agency in deciding whether to take enforcement action. He said that the draft resolution does not delegate enforcement discretion to the committee. Referring to the "maximum practicable reduction" standard established by the PMP rule, Ms. Bush added that the committee's advice and recommendations could be a factor the Commission would consider in defining "maximum, practicable reduction" in some instances.

Mr. Donnelly asked whether the IAC had reviewed a draft resolution that differed substantially from the proposed resolution. Mr. Tudor said the IAC had been asked for input at earlier stages, at which points the IAC did not offer much feedback. It was agreed that since the annual reports would not be submitted until 2007, Commission action on the resolution was not urgent, and there would be sufficient time for the IAC to review and comment on the proposed draft resolution at its April meeting, with the objective of presenting a potentially new and improved version of the resolution for the Commission's consideration at its meeting on May 10th.

Resolution Modifying the Membership of the Flood Advisory Committee. Mr. Fromuth reported that the proposed resolution would modify Resolution No. 2000-8, creating the Flood Advisory Committee (FAC). The FAC was established in 2000 to develop recommendations for improving flood warning and response in the Delaware River Basin and to make additional recommendations for flood loss reduction. The committee's membership included 19 different agencies and organizations: the U.S. Geological Survey, the U.S. Army Corps of Engineers, the Federal Emergency Management Agency and the four Basin state emergency management agencies, the states' environmental protection agencies, the National Weather Service and others. The original resolution is posted on the DRBC website, along with a full list of the committee's members.

In the wake of the Delaware River floods of 2004 and 2005, the committee recommended a closer look at emergency management at the local level. Resolution 2000-8 called for a media representative but did not provide for representation by local emergency management organizations on the committee. The committee has since recognized that having a single commercial media representative is not the best means for the committee to communicate its activities and recommendations to the wider public. In its February 8, 2006 meeting, the committee recommended that the membership be expanded to include one municipal or county emergency management representative from each of the Basin states and that the provision for a media representative be dropped in favor of relying upon the DRBC's Communications Manager as a media liaison for flood-related activities. The proposed resolution would effect these changes. All other aspects of the committee would remain unchanged.

It was noted that the title "Communications Manager" should replace the title "Public Information Officer" in the in the fifth 'Whereas' clause and in numbered paragraph 2 of the resolution. Hearing no further comments, Mr. Donnelly requested a motion to approve the proposed resolution modifying the membership of the Flood Advisory Committee, as amended. Mr. Gast so moved, Mr. Wolfe seconded the motion, and Resolution No. 2006-3 was approved by unanimous vote.

Resolution Authorizing the Executive Director to Extend the Commission's Contract with the Northeast-Midwest Institute on a Month-to-Month Basis Through June 30, 2006. Mr. Tudor explained that the proposed resolution would extend the Commission's contract with the Northeast-Midwest Institute (NEMW) for three additional months, through June of 2006. The contract would otherwise expire at the end of March. The Commission is currently attempting to ensure that it has a place in the Water Resources Development Act (WRDA) bill and in Congressional appropriations. It also is seeking priority for a Basin project. DRBC staff has a rapport with NEMW, and the Institute has been making good efforts on DRBC's behalf. The contract is a joint agreement with the Susquehanna River Basin Commission and the Interstate Commission on the Potomac River Basin. The Commission's share of the cost of the proposed three-month extension would be $4,800. Staff and NEMW have recently succeeded in reinvigorating the Delaware River Basin Task Force under the leadership of Congressman Fitzpatrick of the 8th District of Pennsylvania. Representative Fitzpatrick is poised to enlist the support of his fellow representatives from the Basin on behalf of DRBC initiatives with multi-state benefits. Thus, staff believes the money would be well-spent at this juncture.

Mr. Wolfe asked whether it would be possible to judge the success of the NEMW effort, given that the Federal budget would not be approved by June 30. Mr. Tudor said that staff's experience over the past few years has been that the earlier half of the budget cycle is the most critical, because this is when requests go in and the authorizers submit their "Dear Colleague" letters to the appropriators. By the end of June, these critical steps will be completed and DRBC will be in a position to await the outcome. Lt. Col. Ruch said that he expected to have a clearer view by the end of June on the prospects for the WRDA bill. Mr. Wolfe asked whether there would be a deliverable by June 30. Mr. Tudor said that the only potential deliverable would be action on WRDA. The WRDA bill has been approved by the Senate, with the support of 80 senators out of 100. If it is approved by the House, then the President will decide whether to approve it or veto it. It would be his first veto. Mr. Tudor reiterated that DRBC's activity needs to be focused in the first half of the year. The Commission would let the contract expire at the end of June. Mr. Tudor added that staff would work with NEMW to produce a status report by the end of June, along with an action plan to be implemented by staff to the extent possible, through the end of the budget cycle.

Mr. Donnelly requested a motion to approve the resolution authorizing the Executive Director to extend the Commission's contract with the Northeast-Midwest Institute on a month-to-month basis through June 30, 2006, with the understanding that the contractor would produce a progress report and action plan for the Commission by that date. Mr. Nuffer so moved, Lt. Col. Ruch seconded the motion and the Commissioners approved Resolution No. 2006-4 by unanimous vote.

Resolution Authorizing the Executive Director to Solicit Quotes and Enter into a Contract for Printing the Updated Delaware River Recreation Maps and to Recover Its Costs with Proceeds from

Sale of the Maps. Ms. Bush reported that for 38 years, from 1966 until 2004, the Commission distributed its Delaware River Recreation Maps upon request for the cost of postage, to paddlers and other recreationists who wanted to be able to navigate the river from top to bottom. The maps furnished important information, including the locations of take-outs and put-ins, riffles and rapids, camp sites, picnic sites, and other amenities and points of interest. They have been an effective vehicle for promoting safe enjoyment of the river and for encouraging environmental stewardship. The maps were last printed in 1991, and the 10,000-copy print run was exhausted by June of 2004. By that time, staff already had decided that it was necessary to update the maps and make them GIS-based rather than simply graphic.

In the early 2000s, DRBC joined with the Delaware River Greenway Partnership, a not-for-profit organization: the National Park Service; the American Canoe Association and other regional, state and local partners to apply for a Community Conservation Partnerships Program Grant from the Pennsylvania Department of Conservation and Natural Resources (PA DCNR) for the development of a Delaware River Water Trail Master Plan, of which the updated GIS-based river recreation maps were proposed to be one component. PA DCNR approved a grant that included the sum of $10,000 to help develop the new maps. The Commission and others contributed additional in-kind labor to complete the maps, which now are near ready for printing. Karen Reavy of the Information Services Branch distributed samples of the maps for the Commissioners to view. The map sets would consist of 10 maps each, depicting the river from the West Branch at the top of the Basin to the Tacony-Palmyra Bridge in the Estuary. Water-proof stock will be used so that the maps can be carried on the river.

Mr. Nuffer asked if the maps were digital representations and if they would be available on CDs. He suggested that CDs would allow users to access points on the maps in greater detail. Ms. Bush said that unfortunately, although the updated maps are based upon GIS data, they are graphics. Additional layers of data are available at the click of a mouse. Ms. Reavy explained that the detail displayed on the maps is the greatest level of detail available. Mr. Nuffer said the maps would still be very useful tools.

The projected printing cost is $30,000 for 5,000 sets of 10 maps each on waterproof paper. Staff proposes that the Commission charge for the maps in order to recover the cost of printing ($6.00 per set) and a portion of the cost of the labor required to develop the maps. The price is expected to be set at between $10 and $15. There have been consistent requests for the maps since DRBC ran out of the 1991 maps two years ago. Staff believes that substantial demand exists for the maps and expects the first printing to sell out in only a few years. Ms. Bush explained that the Commissioners were being asked to approve an initial outlay of $30,000. This sum is available through a small 2006 budget surplus. The sum is proposed to be recaptured through map sales.

Mr. Donnelly asked for further questions or comments. Hearing none, he requested a motion to approve the proposed resolution authorizing the Executive Director to solicit quotes and enter into a contract for printing the updated Delaware River recreation maps and to recover its costs with proceeds from the sale of the maps. Lt. Col. Ruch so moved, Mr. Gast seconded his motion and Resolution No. 2006-5 was approved by unanimous vote.

Resolution Authorizing the Executive Director to Enter into an Agreement with the U.S. Geological Survey for GIS Analysis of Water Demand Estimates and Projections Within the Basin and the Commonwealth of Pennsylvania, Utilizing Funds Appropriated by the Commonwealth to Implement Act 220. For the past two years, with funds appropriated by the Pennsylvania legislature, the Commission has assisted the Commonwealth in advancing its state water plan, which is due to be completed in 2008. The Commission has helped to conduct data management and data organization tasks as well as to perform water demand projections, a substantial effort which DRBC staff undertook with the assistance of a subcontractor, CDM. The next step in the process, supported by Commonwealth funding for FY 2005-2006, involves the application of GIS analysis to develop watershed-based demand projections. Among other things, the analysis will reveal whether some watersheds in Pennsylvania are at or near the point at which demand is exceeding available supply. The USGS has submitted a proposal to assist in performing this work.

Mr. Donnelly invited further questions or comments. Hearing none, he requested a motion for a resolution authorizing the Executive Director to enter into an agreement with the U.S. Geological Survey for GIS analysis of water demand estimates and projections within the Basin and the Commonwealth of Pennsylvania, utilizing funds appropriated by the Commonwealth to implement Pennsylvania Act 220. Mr. Gast so moved, Lt. Col. Ruch seconded his motion and Resolution No. 2006-6 was approved by unanimous vote.

Resolution for the Minutes Authorizing a No-Cost Extension of the Commission's Contract with Axys Analytical Laboratories for Sampling and Analysis of Ambient Water, Wastewater and Sediment Samples in Connection with the Control of Certain Toxic Substances in the Delaware Estuary. Dr. Fikslin explained that the proposed resolution would authorize a no-cost extension of the Commission's contract with Axys Analytical Services, Ltd. ("Axys"), which has performed analytical work for the Commission in connection with the Stage 1 and Stage 2 TMDLs for PCBs in the Delaware Estuary. Previously, by Resolution No. 2005-3 in January of 2005 the Commission authorized an extension of its contract with Axys, as well as the expenditure of additional funds, in order to provide for the analysis of samples being collected in connection with the Stage 2 TMDL. The Commission is in the process of developing an RFP for analytical services to replace the Axys contract. There are samples requiring analysis now, however, to ensure continued progress on the Stage 2 TMDL and the PCB TMDL for Water Quality Management Zone 6, the Delaware Bay. The proposed resolution would authorize an extension of the Commission's agreement with Axys through September of 2006 at no additional cost.

Mr. Gast suggested that the resolution be revised to say "no-additional-cost extension" rather than "no-cost extension," which in his view implies that the work will be done at no charge. Mr. Donnelly pointed out that the intent is made clear in the "Be it resolved" section at the end of the resolution.

The complete text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes authorizing a no-cost extension of the Commission's contract with Axys Analytical Services Ltd. for sampling and analysis of ambient water, wastewater and sediment samples in connection with the control of certain toxic substances in the Delaware Estuary.

Whereas, by Resolution No. 2005-3, the Commission authorized the Executive Director to extend through December 2005 the Commission's agreement with Axys Analytical Services Ltd. ("Axys") for analytical and interpretative services in connection with studies of ambient water, wastewater and sediment required for the development and allocation of Stage 2 TMDLs for PCBs and to gather data on other toxic pollutants in the Delaware Estuary; and

WHEREAS, the incremental dollar amount of the agreement with Axys was not to exceed $375,000; and

WHEREAS, additional time is required to complete the sampling and analysis contemplated by the 2005 contract extension; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

The Executive Director is authorized to extend the agreement with Axys Analytical Services Ltd. through September of 2006 at no additional cost to the Commission, for analytical and interpretative services in connection with studies of ambient water, wastewater and sediment required for the development and allocation of Stage 2 TMDLs for PCBs and to gather data on other toxic pollutants in the Delaware Estuary.

This Resolution shall take effect immediately.

Mr. Donnelly requested a motion in favor of the resolution authorizing a no-cost extension of the Commission's contract with Axys Analytical Laboratories for sampling and analysis of ambient water, wastewater and sediment samples in connection with the control of certain toxic substances in the Delaware Estuary. Mr. Nuffer so moved, Mr. Gast seconded his motion and the Resolution for the Minutes was adopted by unanimous vote.

Resolution Honoring Dr. Ruth Patrick and Designating the Ruth Patrick River Garden. Mr. Donnelly explained that at the December 7, 2005 Commission meeting a ceremony was held honoring Dr. Patrick and an accompanying resolution was proposed; however, the Commissioners never acted on the resolution.

Mr. Donnelly requested a motion for approval of the resolution honoring Dr. Ruth Patrick and designating the Ruth Patrick River Garden. Mr. Gast so moved, Lt. Col. Ruch seconded his motion and Resolution No. 2006-7 was adopted by unanimous vote.

Resolution Honoring Fred Nuffer Upon His Retirement for Devoting Much of His Career to Protecting and Restoring the Water Environment of New York State and For Serving for More Than Six Years as Assistant Director of the Division of Water of the New York State Department of Environmental Conservation (NYSDEC).

The complete text of the resolution to be incorporated into the Minutes follows:

RESOLUTION

WHEREAS, Fred Nuffer has devoted much of his career to protecting and restoring the water environment of New York State and for more than six years has served as Assistant Director of the Division of Water of the New York State Department of Environmental Conservation (NYSDEC); and

WHEREAS, in July of 2003 Governor George E. Pataki appointed Fred to serve as his Third Alternate on the Delaware River Basin Commission (DRBC), effectively making Fred New York State's voice on the Commission; and

WHEREAS, Fred led the DRBC as Commission Chair from July 1, 2004 through June 30, 2005; and

WHEREAS, in his role as Commissioner, Fred has been a strong advocate for improving multi-purpose water management, notwithstanding structural, legal and financial constraints, to say nothing of his own brush with mortality; and

WHEREAS, Fred also has been a force for integrating the voices of diverse and sometimes adverse interest groups into the debate among the Basin States and New York City over streamflows and reservoir operations; and

WHEREAS, in September of 2003, Fred helped the Commission and the Parties to the Supreme Court Decree of 1954 reach consensus for initiating a non-binding collaborative process to develop flow management options for the Delaware River and its regulated tributaries, to include input from a new Subcommittee on Ecological Flows; and

WHEREAS, Fred was Acting Chair at a DRBC meeting in Albany on April 21, 2004, at which the Commission unanimously approved a three-year Interim Fisheries Protection Program, developed and promoted ardently by the NYSDEC, which increased the size and flexibility of use of habitat and temperature banks, in addition to establishing flow targets for the first time in the West Branch, the East Branch, and the Neversink rivers; and

WHEREAS, during late 2005 and early 2006 Fred worked to negotiate interim snowpack and temporary non-snowpack void programs to enhance flood protection and alleviate fear of flooding in communities below the Pepacton and Neversink reservoirs; and

WHEREAS, in addition to being a progressive and capable water resource manager, a diplomat, and a colleague who has demonstrated as great a concern for individuals as for issues, Fred is doubtless one of the most skilled paddlers to navigate the Delaware; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

Commission members and staff and citizens of the Basin join in expressing our profound gratitude to Fred Nuffer for his dedication to public service and his commitment to excellence in water resource management. We wish him continued good health, happiness, and many more miles of riffles and rapids.

Before moving to the Public Dialogue portion of the meeting, Mr. Donnelly stated for the record that a comment had been made during the hearing portion of the meeting suggesting that he was aware of a special deal benefiting one or more of the docket applicants. He said he wanted it known that he is aware of no special deals accorded any applicants before the Commission at any time.

Public Dialogue. Chairman Donnelly recognized Mr. Richard Schneider, a concerned citizen from Delaware. Mr. Schneider said that he and many other citizens of Delaware are greatly concerned about the impact on the Delaware River of DuPont's titanium dioxide plant in Edge Moor, Delaware on the banks of the river. According to Mr. Schneider, this plant is the primary source of dioxins in the country. Mr. Schneider noted that he had provided important information to the Commission at previous meetings. He said he had returned to provide an update on this problem, which he described as having three parts: (1) what to do with a pile of over 500,000 tons of EPA-declared hazardous waste; (2) clean-up of the Edge Moor facility; and (3) an effort to reduce the toxins produced by the plant now and in the future.

First, concerning the over 500,000-ton, 14-acre toxic pile, Mr. Schneider said that DNREC has requested bids for an independent third-party study of alternatives. A contractor has not yet been chosen. The pile is called Zone 4 and has a temporary cover on it. Zones 1, 2 and 3 consist of other accumulations of toxic waste with a permanent cover on them. Mr. Schneider said that because Zones 1, 2 and 3 have a permanent cover, DNREC does not consider them to be a problem and has not included them in the proposed study. Mr. Schneider said that he and other citizens do consider these sites to be a major problem. In their view, the total toxic waste problem is thus over 2 million tons, lacking any protection along the sides and bottom. Mr. Schneider noted that he had previously provided the Commissioners with a list of the reasons that the waste in Zones 1 through 4 should be removed as well as citations to the pages in the DNREC hearing transcripts where these reasons were discussed. He said it that a "permanent cover" does not satisfy RCRA requirements for hazardous waste management or disposal.

Second, with respect to cleanup of the Edge Moor facility itself, Mr. Schneider said that DNREC and the EPA have developed a clean-up plan. The plant is treated separately from the toxic pile because it is at a different location approximately a mile away. The facility clean-up plan entails four steps. The first consists of identifying sites of concern called solid waste management units (SWMUs) and deciding which SWMUs are to be tested. Twenty-six sites at the Edge Moor facility have been labeled SWMUs. The second step consists of testing the selected SWMUs. Third, decisions are made as to how the bad SWMUs should be cleaned up. Fourth, the agreed-upon clean-

up plan is implemented. DNREC currently is performing the first step of choosing which SWMUs to test. A decision is expected to be made within a few months.

Mr. Schneider said that he and other concerned citizens enthusiastically support the testing and clean-up of the Edge Moor site. They are concerned, however, about the former hazardous waste settling ponds constituting SWMU No. 6. Soils have not been tested in these four large pond areas, each approximately two acres in size. Instead, according to Mr. Schneider, these areas were filled and covered up in accordance with a 2001 agreement between DNREC and DuPont. There was no opportunity for public comment on the agreement until four years later at a hearing on November 16, 2005. According to Mr. Schneider, the unlined ponds were built in the early 1950s with no concern for the environment and were used until 1996. Thus, for over 45 years, millions of gallons of EPA-classified hazardous waste saturated the ground beneath the ponds, poisoning the groundwater, the aquifer and the river. In Mr. Schneider's view, to allow the pond areas to go untested and merely to cover them up is unacceptable. These areas are the largest and most toxic portion of the site in his view, and he and other concerned citizens are demanding that the soil beneath each pond be tested and where found to be contaminated, that this soil be removed. Mr. Schneider said he hopes that the Commission also will see the toxic waste settling ponds as areas of major concern.

Mr. Schneider next addressed the need to develop and implement a plan to reduce toxins produced at Edge Moor now and in the future. He described the plant as a large facility that discharges large waste streams into the air and water. He said that the plant process itself, which involves combining organic material and chlorine at extremely high temperatures (900 degrees) inadvertently generates PCBs and dioxins. In addition to PCBs and dioxins, Mr. Schneider said that other chemicals and metals in the plant's waste are causes for concern. Mr. Schneider said that Jim Werner, DNREC's Director of Waste Management, recently told him that the DuPont Edge Moor plant deposits 30,000 pounds of manganese into the Delaware River every year. In the spring of 2005, DuPont wanted to manufacture a new product at Edge Moor that would cause more pollution. DNREC and DuPont reached a new agreement for adding this product. To mitigate the additional environmental impacts, DuPont agreed to burn natural gas, a cleaner and more expensive fuel source than the customary fuel source, which is coke, for ten days a year. Thus, pollutants would be reduced in one medium to compensate for increasing pollutants in another. Mr. Schneider said that DuPont could voluntarily burn a cleaner fuel all the time to reduce pollution, but to do so would result in less profit, so DuPont uses the less expensive and dirtier coke. Mr. Schneider said that for DuPont, profit is always most important. Mr. Schneider asked the Commission to use its authority to require DuPont to use natural gas more than ten days a year because it is more protective of the environment.

Next, Mr. Schneider said that the Commission needs to be aware and concerned because the DuPont Edge Moor plant is contributing a source of PCBs and dioxins to the environment "through the back door without your knowledge." The pollutants are contained in ferric chloride that is produced by DuPont at Edge Moor and used for water purification. EPA does not require the PCBs and dioxins in ferric chloride to be measured and tracked, according to Mr. Schneider. After the ferric chloride is used for water purification, it is distributed all over the countryside as a fertilizer. According to Mr. Schneider, it still contains the PCBs and the dioxin, but again, these pollutants are not measured or tracked by EPA. When it rains, this sludge that is tainted with PCBs and dioxins is washed into streams and into the river. EPA does not keep track of it, Mr. Schneider said, because ferric chloride is considered a by-product. Mr. Schneider said that because the Commission is working to reduce the amount of PCBs in the river, it needs to be aware of the ferric chloride coming from Edge Moor.

He said he would submit to the Commission in the future a report written by an expert on ferric chloride. He hopes that the expert will attend a future meeting of the Commission and make a presentation in person.

Mr. Schneider said that the public's angry response at the hearings held by DNREC in 2005 on the toxic waste pile appeared to prompt DuPont to invest resources in cleaning up the process at its Edge Moor plant. He remarked that bad publicity can be an effective motivator. According to Mr. Schneider, DuPont developed the clean-up plan for Edge Moor and promised to pursue it over ten years ago, but it did not begin implementing the plan until recently. A small pilot project was originally conducted as a demonstration for EPA and DNREC, Mr. Schneider said; however, he believes that a full-scale effort is now underway.

Mr. Schneider said that he and the other concerned citizens contacted DNREC and requested that they and their expert be permitted to see the clean-up effort first-hand in order to evaluate it. According to Mr. Schneider, the public is not permitted to know exactly what is being done because DuPont and DNREC signed a confidentiality agreement. DuPont claims confidentiality is necessary in order to protect proprietary information. Mr. Schneider said that he is hopeful progress will be made in cleaning up the Edge Moor plant and process. He asked the Commission to form a special task force and to implement a plan to reduce toxins at Edge Moor now and in the future. He asked that specific deadlines and percentage reductions be established. Mr. Schneider requested further that a thorough review of waste streams from the plant be performed in order to track disposition of the PCBs and dioxins in the ferric chloride. He said that the expert who is assisting him and the other concerned citizens is willing to help the Commission. They are greatly concerned about the river and consider it a tragedy that there are advisories against eating fish caught above the Chesapeake and Delaware Canal.

In closing Mr. Schneider said that DuPont proposed to make millions in profit by treating and discharge four million gallons of VX hydrolysate at its Chambers Works plant in New Jersey. At the public hearings on the project in both New Jersey and Delaware, he said, the public overwhelmingly opposed the project. Mr. Schneider said that DuPont's plants in New Jersey and Delaware have poisoned the Delaware River for many years and continue to poison the river today. Mr. Schneider said the public seeks ways to reduce toxins in the river and to prevent new sources of toxic pollution from entering the river. He urged the Commission not to allow DuPont or any other company to use the river as its dumping ground. He said the river belongs to everyone and to the aquatic life and wildlife that depend upon it. He thanked the Commissioners for their attention.

Mr. Donnelly thanked Mr. Schneider for his comments. He then reminded everyone that this was Fred Nuffer's last meeting. On behalf of the Commissioners and the people they represent, he thanked Mr. Nuffer for doing a great job. Mr. Nuffer then introduced Mark Klotz, who will be taking over as Governor Pataki's representative on the Commission. He expressed confidence in Mr. Klotz's ability to do a great job. He thanked the other Commissioners and the Commission staff for doing a wonderful job and said he both appreciated and enjoyed the opportunity to work with them.

Hearing no further comments, Mr. Donnelly invited a motion to adjourn. Lt. Col. Ruch so moved, Mr. Nuffer seconded the motion and all concurred. The Commission's business meeting was adjourned at 4:45 p.m.

/s/ Pamela M. Bush
Pamela M. Bush, Esquire, Commission Secretary